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**IN THE
COURT OF APPEALS OF INDIANA**

REESE SHEPARD,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 48A02-0610-CR-935

APPEAL FROM THE MADISON SUPERIOR COURT

The Honorable Dennis Carroll, Judge

Cause No. 48D01-0504-FC-87

June 21, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Reese Shepard (Shepard), appeals the trial court's revocation of his probation.

We affirm.

ISSUES

Shepard raises two issues on appeal, which we restate as follows:

- (1) Whether the trial court violated Shepard's right of confrontation by admitting hearsay evidence at his probation revocation hearing; and
- (2) Whether the State presented sufficient evidence to support Shepard's probation revocation.

FACTS AND PROCEDURAL HISTORY

On August 23, 2005, Shepard pled guilty to sexual misconduct with a minor, a Class D felony. He was sentenced to thirty months executed, with eighteen months suspended to probation. At the same time, he was ordered to submit to the standard conditions of probation, including sex offender treatment. In April of 2006, after completing his residency at the Department of Correction, Shepard was evaluated and found in need of sex offender treatment. His first treatment provider, Don Allbaugh with the Center for Mental Health, refused to admit him to the treatment program as long as Shepard was allowed to remain in his home unsupervised with a minor child. Refusing to move out of his residence, Shepard, with the court's permission, switched his treatment to Ed Pereira (Pereira), a counselor with the Family Service Society, Inc.

Shepard initially met with Pereira on June 10, 2006. Shepard then cancelled his next meeting and failed to show for the next four or five appointments between June and September of 2006. When he was on the verge of being expelled, Shepard scheduled and attended another appointment with Pereira on September 1, 2006. During this appointment, Pereira assigned him to a weekly adult sex offender group. Attending his group meeting on September 11, 2006, Shepard acted as “an angry young man.” (Appellee’s App. p. 1). In his letter to Sharon Adams (Adams), Shepard’s probation officer, Pereira explained that even though he was not verbally disrespectful, “his body language clearly indicated that he did not want to be there.” (Appellee’s App. p. 1). Shepard failed to attend all other group meetings. It was clear to Pereira that Shepard was “not interested in dealing with his unhealthy character traits that contributed to his sexual offending.” (Appellee’s App. p. 1). Accordingly, on September 26, 2006, Pereira notified Adams that Shepard was expelled from the sex offender treatment program.

A second probation condition ordered Shepard to receive substance abuse treatment. Even though he submitted to an evaluation on August 14, 2006, he never attended or participated in the program. Additionally, Shepard was ordered to maintain employment and provide verification thereof. Although he told Adams that he was employed, Shepard failed to submit any verification.

On September 21, 2006, the State filed a Notice of Violation of Probation, which was amended eight days later on September 29, 2006. In its Notice, the State alleges that Shepard violated his probation by failing to (1) obtain substance abuse treatment; (2) complete sex offender treatment; (3) provide verification of employment; and (4) to pay

probation fees. On October 16, 2006, during the evidentiary hearing, Adams testified to the information she received from Pereira concerning Shepard's compliance and subsequent expulsion from the sex offender program. While testifying, the State entered into evidence Pereira's letter, dated September 26, 2006, which documented these facts. Shepard unsuccessfully objected to Adams' hearsay testimony and admission of the letter on the ground that this evidence violated his right of confrontation. At the close of the evidence, the trial court found that Shepard had committed a violation of his probation by not completing his substance abuse treatment, not providing verification of employment, and by not completing his sex offender program. Subsequently, the trial court ordered Shepard to serve the previously suspended eighteen-month sentence.

Shepard now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Shepard contends that the trial court abused its discretion by revoking his probation. Specifically, he asserts that the trial court violated his right to confrontation by admitting Adams' testimony regarding Pereira's evaluation of Shepard's participation in the sex offender program. Additionally, Shepard contests the sufficiency of the evidence revoking his probation.

I. Admission of Hearsay Evidence

First, Shepard asserts that during the revocation hearing, the trial court violated his right to confront witnesses. In particular, Shepard refers to Adams' testimony regarding Pereira's letter in which he described Shepard's cancelled and missed appointments, his attitude during the sole group session he attended, and his eventual expulsion from the

program. Shepard maintains that as Pereira was an adverse witness, he should have been allowed to cross-examine him.

It is well settled that probationers are not entitled to the full array of constitutional rights afforded to defendants at trial. *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999), *reh'g denied* (quoting *Gagnon v. Scarpelli*, 411 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972)). But the Due Process Clause of the Fourteenth Amendment does impose some procedural and substantive rights on the revocation of the conditional liberty created by probation. *Id.* One of these rights is the right to confront and cross-examine witnesses. Ind. Code § 35-38-2-3(e); *see also id.* However, at the same time, a probation revocation hearing is not to be equated with an adversarial criminal proceeding. *Cox*, 706 N.E.2d at 550. Rather, it is a narrow inquiry, and its procedures are to be more flexible. *Id.* This is necessary to permit the court to exercise its inherent power to enforce obedience to its lawful orders. *Id.* Consequently, precisely because probation revocation proceedings are to be flexible, strict rules of evidence do not apply. *See* Ind. Evidence Rule 101(c); *see also id.* As such, the trial court may consider any relevant evidence bearing some substantial indicia of reliability. *Cox*, 706 N.E.2d at 551.

Consistent with the foregoing principles, we do not consider Shepard's hearsay allegation pursuant to the traditional rules of evidence, but instead determine whether Adams' testimony concerning Pereira's observations was reliable enough to have been admitted over objection. We find that it is.

Here, Adams solely testified to the contents of Pereira's letter, dated September 26, 2006. She recounted Shepard's expulsion from the program and the reasons leading

to Pereira's decision, which were documented in the letter. Furthermore, Shepard does not appear to contend the fact of the expulsion and missed appointments; rather he merely takes issue with Pereira's vague description that "his body language clearly indicated he did not want [to attend the group session]." (Appellee's App. p. 1). As the letter clarifies, his body language during the group session was but one of the many considerations resulting Pereira's decision to dismiss Shepard from the program. Thus, we conclude that Pereira's letter exhibited sufficient indicia of reliability.

II. *Sufficiency of the Evidence*

Turning to Shepard's sufficiency of the evidence argument, we note again that a probation revocation hearing is in the nature of a civil proceeding. *Pitman v. State*, 749 N.E.2d 557, 559 (Ind. Ct. App. 2001), *trans. denied*. As such, the alleged violation need be proven only by a preponderance of the evidence. *Id.* Moreover, violation of a single condition of probation is sufficient to revoke probation. *Id.* As with other sufficiency questions, we do not reweigh the evidence or judge the credibility of witnesses when reviewing a probation revocation. *Id.* We look only to the evidence that supports the judgment and any reasonable inferences flowing therefrom. *Id.* If there is substantial evidence of probative value to support the trial court's decision that the probationer committed any violation, revocation of probation is appropriate. *Id.*

In the case before us, the trial court concluded that Shepard had committed three separate probation violations: he failed to (1) complete his substance abuse treatment; (2) provide verification of employment; and (3) complete his sex offender program. However, Shepard only appears to challenge the sufficiency of the evidence supporting

the third violation. As violation of a single condition of probation is sufficient to revoke probation, his two uncontested violations are enough to uphold his revocation. *See id.*

Regardless, we also conclude that the State presented sufficient evidence to support his revocation based on his failure to complete the sex offender treatment. Adams, testifying to Pereira's observations, informed the trial court that after Shepard's first meeting with his counselor, he cancelled or missed his next four to five appointments. When threatened with expulsion, Shepard scheduled another appointment and attended a group meeting. Based on Shepard's missed meetings and attitude during the group meeting, Pereira concluded that it was very clear that "Shepard [was] not interested in dealing with his unhealthy character traits that contributed to his sexual offending." (Appellee's App. p. 1).

Shepard now asserts that not his non-attendance to the various appointments and meetings led to his dismissal from the program, but rather his inability to financially afford the treatment. We are not persuaded. The record is devoid of any evidence that Shepard brought his financial difficulty to anyone's attention or made any efforts to seek accommodations. Instead, the first time he even alleged financial difficulties was during the probation revocation hearing. Furthermore, Pereira's letter clearly specifies that he was expelled from the program because he failed to participate sincerely in the program, not for non-payment of fees. Accordingly, we find that the State proved by a preponderance of the evidence that Shepard violated his condition of probation. Therefore, we decline Shepard's invitation to reverse the trial court's Order.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not violate Shepard's right of confrontation by admitting hearsay evidence at his probation revocation hearing; and, additionally, we conclude that the State presented sufficient evidence to support Shepard's probation revocation.

Affirmed.

NAJAM, J., and BARNES, J., concur.